

**CNMI GARMENT INDUSTRY MONITORING PROGRAM****I. Purpos**

- A. This CNMI Monitoring Program ("Program" or "Monitoring Program") is established by the Settlement Agreements ("Agreements") to which it is an Exhibit. The Program establishes operating standards and procedures for the inspection and certification of CNMI garment industry manufacturing facilities and living quarters, for the protection of the health, safety and rights of nonresident garment workers. The Program reflects a joint undertaking by CNMI garment manufacturer and workers to protect the industry and its workers, in the recognition that the garment industry is a significant contributor to the CNMI economy and provides important economic opportunities to its workers.

**II. Definitions (other definitions appear in the sections to which they pertain)**

- A. Oversight Board" ("OB") is the body charged with responsibility for administering the Program.
- B. "Manufacturer" is any individual, company, or other entity that owns or operates garment production facilities that employ Workers in the CNMI to produce garments.
- C. "Subcontractor" is any individual, company, or other entity that employs Workers in the CNMI to provide cut and sew, laundering, or finishing services to a Manufacturer.
- D. "Monitors" are the individuals, companies, or other entities engaged by the OB to inspect Manufacturers pursuant to the Program.
- E. "Worker" is an individual, other than a CNMI Resident Worker as defined in 3 CMC §4412(n), who is employed by a Manufacturer or Subcontractor in the CNMI garment industry in an FLSA non-exempt capacity (29 C.F.R. §541.1 *et seq.*).
- F. "Manufacturer's Facilities" and "Facilities" refer to the manufacturing facilities, housing facilities and/or cafeterias operated by a Manufacturer or Subcontractor and located in the CNMI.
- G. "Manufacturer's Operations" and "Operations" are the business policies and practices of Manufacturers and Subcontractors addressed by the Program Standards.
- H. "Certified Manufacturer" is a Manufacturer whose Facilities and Operations are certified pursuant to the Program.
- I. "Customer" is an individual, company, or other entity that contracts with a Manufacturer for the purchase of garments manufactured in the CNMI that are intended for sale in the United States.

"Inspection" is the process of inspecting a Manufacturer's Facilities and Operations in the CNMI in accordance with the Program Standards set forth herein

"Employment Broker" is any individual, company, or other entity, or its agents, that has a contractual or other business arrangement with a Manufacturer to recruit, solicit, or arrange for individuals to obtain or renew employment as Workers.

"Employment Fee" is any payment made by or on behalf of an individual to Employment Broker or Manufacturer, or pursuant to an agreement with an Employment Broker or Manufacturer, as a condition of or to facilitate employment of the individual as a Worker by a Manufacturer.

"Conduct Warranting Probation" is conduct by a Certified Manufacturer in violation of the Program Standards that reflects the Certified Manufacturer's willful or reckless disregard of the Program Standards, as determined by a Monitor after considering the seriousness, frequency, and relatedness of those violations and the Certified Manufacturer's willingness to undertake reasonable remedial action, in accordance with the factors and procedures set forth herein.

"Probation" is the status in which the OB may place a Certified Manufacturer upon determining in accordance with the factors and procedures specified herein that the Certified Manufacturer has engaged in Conduct Warranting Probation and has persisted in its willful and reckless disregard of the Program Standards.

"Court" is the court that approves the settlements in *Does I et al. v. Advanced Textile Corp. et al*, CV-99-0002 (D.N.M.I.), pursuant to the Settlement Agreements.

"Program Effective Date" is the date sixty (60) days after the Effective Date of the Agreements to which this Program is an Exhibit.

### III Oversight Board

#### Composition, qualification, selection, and replacement of OB members

- The OB shall be composed of either a single individual mutually selected by and agreeable to all Parties to the Settlement, or three current, retired or former judges, one selected by Plaintiffs' counsel (a "party-selected" member or seat), one selected collectively by all Manufacturer Defendants (a "party-selected" member or seat), and a third who shall be selected by the two party-selected members. If a party-selected seat on the OB becomes vacant, that Party shall select a new OB member. If the third seat becomes vacant, the two party-selected members shall select a new judge meeting the qualifications for that seat. If a seat on the OB is vacant for more than sixty (60) days, the remaining members of the OB shall notify the Court, which shall select a current, retired, or former judge qualified to fill the vacancy temporarily. To facilitate the expeditious implementation of the Program, the Parties shall make their respective

selections of OB members ~~no later than thirty (30) days after the Agreements are executed, and those OB members shall use their best efforts to select a third OB member by no later than thirty (30) days thereafter.~~

**B. Decisions**

- 1. All decisions of the OB shall be made by majority vote and shall be final and binding except as otherwise provided herein.**

**C. Compensation**

**Each OB member shall be compensated for his or her OB service monthly at the rate of one hundred thousand dollars (\$100,000) per year, and shall be reimbursed for all reasonable and necessary expenses incurred in connection with that service. The OB may employ administrative staff, including one or more staff persons whose responsibilities include educating Workers regarding this Program and the Certified Manufacturers' obligations thereunder, but who shall have no affiliation with any Monitor and no Inspection responsibilities. The OB's administrative staff shall be required to reside on Saipan during their period of employment. Each OB member may also employ a part-time or full-time clerical assistant. Neither the OB members nor their clerical assistants are required to reside on Saipan. Compensation to OB staff and assistants shall be determined and paid by the OB in accordance with local wage rates and benefits commensurate with the person's responsibility, skill level, and experience.**

**D. Responsibilities**

- 1. The OB shall have sole responsibility and discretion over the administration of the Program, but shall have no authority and no power to change, modify or vary the Program Standards or Inspection Protocols, except with the written approval or at the written direction of all Certified Manufacturers and Plaintiffs' counsel. The OB shall have the authority and responsibility to:**
- a. Prepare budgets, manage, invest and dispense funds, and receive application fees from Manufacturers and Subcontractors that apply for certification and are not Parties to the Agreement;**
  - b. Establish, equip, and staff an administrative office on Saipan;**
  - c. Prepare the documents and materials that are the OB's responsibility under this Program; and**
  - d. Establish procedures in accordance with the factors and requirements set forth herein for:**
    - (1) Selecting, evaluating, retaining, and managing Monitors;**

- (2) Informing Certified Manufacturers of their obligations under the Program and the procedures under which the Program will be administered;
- (3) Informing Workers of this Program and their rights and the Certified Manufacturers' obligations thereunder;
- (4) Establishing schedules for the Inspection of Manufacturers' Facilities and Operations;
- (5) Receiving, evaluating, and responding to claims of nonconformance with Program Standards from Workers and responding to credible information from reliable sources regarding any imminent threat to worker health or safety;
- (6) Receiving and evaluating Monitors' Reports and Certified Manufacturers' Responsive Statements, conducting Hearings, making determinations with respect to Certified Manufacturers' Probationary status and conformance with Program Standards, and communicating those determinations as provided herein;
- (7) Establishing plans of remediation with Certified Manufacturers where appropriate, and evaluating compliance where applicable;
- (8) Preparing and disseminating Annual Reports as set forth herein,
- (9) Registering Customers; and
- (10) Informing Customers of a Certified Manufacturer when a Certified Manufacturer has engaged in Conduct Warranting Probation, has been placed on Probation, has been removed from Probation, has violated one or more Program Standards in a manner that poses a serious threat to the health, safety, or economic well-being of a Worker, or has refused to comply with obligations imposed by Section VI of this Program ("Certified Manufacturer's Rights and Obligations").

The OB shall publish annually a publicly-available report ("Annual Report") describing the activities and expenditures of the OB, reporting on the operation of the Program over the preceding 12-month period, and containing a statement of the OB's financial condition. Such Annual Reports shall identify each Certified Manufacturer as of the date of the Annual Report and shall identify each Certified Manufacturer that was placed on Probation more than nine months before the date of the report. The OB shall not otherwise disclose the identity of any Manufacturer in connection with any alleged violation of any Program Standard and shall not disclose the identity of any Customer or Worker.

### 3. Meetings

1. The OB shall conduct its first meeting on Saipan no later than **thirty (30)** days after the Program Effective ~~Date, me~~ shall ~~meet~~ on Saipan at least twice annually. Other meetings of the OB may be held in person or by telephone, or at a place designated by the OB, as frequently as the OB deems necessary, except that all Hearings as provided herein will be held on Saipan.

### 4. OB Inaction

1. No Certified Manufacturer shall suffer any adverse consequences (including but not limited to being placed on Probation or remaining on Probation) as the result of the OB or a Monitor failing to take any action in the time specified in this Agreement; nor shall any delay by the OB or a Monitor excuse any Certified Manufacturer's compliance with any obligation imposed by this Program except as specifically provided in Section X.I.3.b.7, X.I.3.b.9, and X.I.3.b.11 herein.

### 3. Conflict of Interest

1. No OB member, Monitor, their employees, or the spouse, parent, or child of any of them, shall be, or shall have been at any time after January 13, 1999:
  - a. An individual who was a representative plaintiff in or submitted a declaration in *Doe Iv. The Gap, Inc.*, No. CV-01-0031 (D.N.M.I.) or *Does I et al. v. Advanced Textile Corp. et al.*, No. CV-99-0002 (D.N.M.I.); provided that nothing herein shall authorize the unsealing or disclosure of any affidavits or declarations sealed pursuant to court order;
  - b. An owner, director, trustee, officer, volunteer, intern, staff member, paid or unpaid employee of, or person performing an active role or having a significant financial interest in, a Manufacturer, a Customer, or a plaintiff in *Union of Needle Trades, et al., v. Gap, Inc., et al.*, No. 300474 (San Francisco Superior Court); or
  - c. An attorney for any of the aforementioned persons or entities.

### I. Removal

1. Upon application of a Certified Manufacturer or any of its Workers, the Court may remove an OB member and the OB may remove a Monitor for incapacity, abdication of responsibility, bias, or similar good cause shown.

### 1. Liability and Insurance

1. In no event shall the OB, the individual members thereof, or any member of the OB's staff, be liable for damages for acting or failing to act in accordance with the provisions

of the Program. Nevertheless, the OB shall carry liability insurance coverage of not less than \$5,000,000.

**J. Auditor**

1. The OB shall engage an independent auditor to review its finances and operations annually.

**IV. Monitors and Inspector**

**A. Selection of Monitors**

1. All monitoring and inspection functions provided by this Program shall be performed by the International Labour Organization ("ILO") or a body constituted thereby, unless the ILO is not willing to perform the monitoring and inspection functions set forth herein or to act in a related capacity under terms and conditions agreeable to the Parties to the Settlement
2. The Parties shall use their best efforts to obtain the ILO's agreement to perform monitoring and inspection functions under this Program and shall negotiate in good faith to incorporate any modifications to the Program, consistent with its goals and purposes, that are required to obtain the ILO's agreement to perform those monitoring and inspection functions.
3. The Parties shall also meet and confer in good faith concerning delegating to the ILO all or some of the functions of the OB as set forth in Section III.D, provided that nothing in this provision shall require the Parties to agree to delegate any such functions to the ILO.
4. If the ILO is not willing to perform the monitoring and inspection functions provided by this Program, either as set forth herein or as modified by agreement of the Parties, the OB shall have at least two Monitors engaged at all times. If the Parties are unable to agree upon the initial Monitors, prospective Monitors shall apply to the OB. The Parties may make submissions to the OB supporting, challenging, or otherwise commenting on the qualifications and submissions of any prospective Monitors, the OB shall thereupon submit a list of entities deemed Qualified to serve as a Monitor to the Parties, and Plaintiffs' counsel and the Certified Manufacturers shall then each select one Monitor to serve pursuant to this Agreement. The OB shall consider the following factors in determining whether a prospective entity is Qualified to serve as a Monitor:
  - a. The qualifications and experience of the entity, including but not limited to its experience and effectiveness in monitoring under similar Codes of Conduct and Inspection Protocols and in auditing for compliance with labor standards;

- b. ~~The entity's willingness and ability~~ fairly to evaluate compliance with **Program Standards;**
- c. ~~The entity's ability and~~ experience in conducting confidential **worker** interviews in a non-coercive ~~manner and in~~ eliciting meaningful information from workers about **their working and living conditions;**
- d. ~~The entity's projected annual budget for participating in the program; and~~
- e. **Any other consideration deemed relevant by the OB.**

#### Monitors' Employees and Responsibilities

##### **Strict Compliance**

- a. ~~The contract by which a Monitor is engaged shall require the Monitor to conduct~~ **Inspections in strict compliance with the Inspection Protocols and the directives of the OB, in a manner that is neither unnecessarily disruptive of a Manufacturer's Operations nor unreasonably intrusive of Worker privacy.**

##### **Commitment to Confidentiality**

- a. ~~Each OB member, Monitor, and their respective employees, shall sign an agreement to abide by the confidentiality requirements of this Program. Any OB Member, Monitor, or employee that willfully breaches that agreement in any material respect shall be subject to termination.~~

##### **Monitors' Employees**

- 8. ~~The Monitors shall undertake reasonable efforts in selecting personnel to implement this Program to consider the language and communication skills of such personnel, their experience, if any, in the garment industry or in conducting garment industry inspections, and their ability to be perceived by all Parties as fair and impartial.~~

##### **Objections to Employees**

- a. ~~Any Certified Manufacturer or Worker shall have the right to request the OB to terminate any OB employee or to prohibit future work with respect to this Program by any Monitor employee who has manifested bias against a Customer, Manufacturer, or Worker, or who has willfully failed to act in compliance with the Program Standards. The OB shall take appropriate action, in its discretion, based upon its review of the facts and circumstances underlying such request.~~
- b. ~~The Certified Manufacturers shall be entitled collectively to submit to the OB within thirty (30) days after the execution of the Settlement Agreements not more than~~

fifteen (15) names of individuals to whose employment as Monitors or as employees of the OB the Certified Manufacturer object on grounds of pre-existing bias. Such individuals ~~may~~ not be employed as Monitors or as employees of the OB unless the Certified Manufacturers thereafter withdraw their objection.

**Monitor Misconduct**

- a. A Manufacturer or Worker may report to the OB any instance in which a Monitor has varied from the Inspection Protocols or acted in a manner that is biased, unnecessarily disruptive of the Manufacturer's Operations, unreasonably intrusive of Worker privacy, or otherwise contrary to the letter or spirit of this Program. The OB shall investigate each such report as it deems appropriate. If the OB finds such report to be ~~me~~, it may take whatever disciplinary action it determines is appropriate, including termination of the Monitor if it concludes, based upon its assessment of the severity of the problem, its cause, its impact, and the likelihood of its recurrence, that the Monitor has willfully disregarded its obligations under this Program.

**Manufacturer Certification**

entitled a manufacturers e ed Initially Certified

1. Each Manufacturer that becomes a participant in the Program by reason of the Agreements shall be deemed to be Initially Certified as of the Program Effective Date.

**Request For Certification of a Non-Settling Manufacturer**

1. A Manufacturer that was not a Party to the Agreements may apply to the OB to become a Certified Manufacturer. The OB shall establish for each such Manufacturer Applicant a one-time Participation Fee which shall be paid in full by the Manufacturer Applicant upon applying to participate in the Monitoring Program, which Participation Fee shall be reasonable in amount, taking into account the fully-allocated cost of operating the Monitoring Program and the relative size of the Manufacturer Applicant and the character of its facilities. Upon receipt of such Participation Fee, the OB shall cause the Manufacturer Applicant to receive an Initial Inspection. A Manufacturer Applicant whose Facilities and Operations are found to be in substantial compliance with the Program Standards, in the sole and exclusive unreviewable discretion of the OB, shall be certified. A Manufacturer Applicant whose Facilities and Operations are found not to be in conformance with Program Standards and that has not remedied all deficiencies within the period provided for a Follow-up Inspection shall be denied certification without resort to other procedures available to Certified Manufacturers that fail an Inspection. There shall be no limit on the number of times that a Manufacturer Applicant may seek certification once it has paid its Participation Fee, but at least thirty (30) days must pass before a Manufacturer Applicant whose application for Certification has been denied may again be scheduled for an Initial Inspection.



Subcontractors

Each Certified Manufacturer shall inform the OB of the identity of each Subcontractor that it uses or intends to use.

Each Subcontractor that is identified as such to the OB by a Certified Manufacturer prior to the Program Effective Date shall be deemed to be Initially Certified. Each Subcontractor that is later identified as such to the OB by a Certified Manufacturer, and that pays the application fee required by Section V.B.1, shall be deemed Initially Certified and thereafter shall have the rights and obligations of a Certified Manufacturer.

No Certified Manufacturer shall use a Subcontractor in the CNMI unless that Subcontractor is also a Certified Manufacturer.

**VI. Certified Manufacturer's Rights and Obligations**Operations and Maintenance

Each Certified Manufacturer shall maintain its Facilities and conduct its Operations in conformance with the Program Standards.

Permit Inspections

Each Certified Manufacturer shall permit and not impede announced and unannounced Inspections.

Worker Information

Each Certified Manufacturer shall instruct its Workers, during the initial Worker education meetings conducted pursuant to Section V.E, to respond truthfully in interview with Monitors and to communicate to the OB or a Monitor if a Manufacturer's Facilities or Operations do not conform to Program Standards.

**I** Posting of Informational Material

The OB shall prepare for posting by Certified Manufacturers one or more documents in the Workers' native languages that inform Workers of the terms of this Program and the Certified Manufacturers' obligations thereunder. These documents shall describe the Program Standards, explain how a Worker may contact Monitors and CNMI and federal government agencies to report any alleged violations of law or Program Standards, and state that the Certified Manufacturer will not deny any rights to which a Worker is entitled under law or pursuant to this Program or attempt to enforce any contract between a Worker and an Employment Broker, including any term of an overseas employment contract that denies rights protected by the Program Standards. A

Certified Manufacturer shall distribute to its Workers and conspicuously post in each of its Facilities copies of these documents so that they are available to the Workers employed by that Certified Manufacturer.

#### Meetings with Workers

1. The OB or its designees (which may include a Certified Manufacturer, but not a Monitor or a Monitor's employees) shall conduct group meetings with all then-employed Workers within sixty (60) days after the Program Effective Date and with groups of new Workers within the first thirty (30) days of those Workers' starting dates, to describe the Program and the Certified Manufacturer's obligations thereunder. All Monitors shall be invited to send a representative to such meetings.
2. At each such group meeting, the OB or its designees shall:
  - a. Describe each Program Standard and where in the Certified Manufacturer's Facilities the Program Standards are posted;
  - b. Inform Workers that the Certified Manufacturer will not deny any rights to which a Worker is entitled under law or pursuant to this Program and will not attempt to enforce any contract between a Worker and an Employment Broker, including any term of an overseas employment contract that denies rights protected by law or by the Program Standards;
  - c. Describe the role of Monitors, how interviews will be conducted by Monitors, and how a Worker may contact a Monitor or CNMI or federal government agency to report any alleged violation of law or Program Standards; and
  - d. Inform Workers orally and in writing that CNMI law limits non-resident Workers' employment contracts to one-year periods, subject to renewal; and that any Worker who claims a right to a full Repatriation Payment pursuant to Section VII.B.4.f, on the ground that the Worker's Certified Manufacturer employer did not obtain a Disclosure Document from the Worker as required by Section W.B.3, must make such a claim to the OB or a Monitor no later than 15 days after the meeting.
3. The OB may, at its discretion, prepare materials consistent with this Monitoring Program for presentation or distribution to Workers; and the Certified Manufacturer shall present or distribute those materials at such meetings if requested by the OB.
4. Such meetings shall be conducted during normal working hours and shall not last more than two hours each. Each Certified Manufacturer shall be required to pay its participating Workers their regular wages for all time spent participating in such meetings. No Worker shall be required to attend more than one such meeting.

#### Program Standards

A. Categories

1. There shall be six categories of Program Standards: Payments to Workers; Record.. and Reporting; Personal Rights; Manufacturing Facilities; Housing Facilities; and Food Services.

B. Payments to Workers

1. Standard 1: Workers shall be paid at least the minimum CNMI legal wage for all hours worked.
2. Standard 2: Workers shall be paid at least one and one halftimes their regular wages for hours worked in excess of forty (40) hours per week.
3. Standard 3: Each Certified Manufacturer shall obtain from each individual hired to be a Worker for that Certified Manufacturer after the Effective Date a document in the individual's native language, signed by that individual at or before the time he or she executes any contract with an Employment Broker (or any contract with the Certified Manufacturer if no Employment Broker is involved), demonstrating that the individual knowingly and voluntarily accepts employment as a Worker with the understanding that his or her term of employment in Saipan is limited by CNMI law to a one-year renewable period only ("Disclosure Document"). No Certified Manufacturer may be found in violation of this provision for having obtained a Disclosure Document that appears valid on its face, absent a showing that the Certified Manufacturer knowingly procured the Disclosure Document through false or fraudulent pretenses with the intent to deceive a Worker or prospective Worker.
4. Standard 4:
  - a. A Worker who is terminated by a Certified Manufacturer (other than for willful abandonment of employment within sixty (60) days after the Worker's arrival in the CNMI), or who voluntarily leaves employment with a Certified Manufacturer for any reason after that 60-day period, shall be entitled to a Repatriation Payment to be paid by the OB from the Repatriation Fund established pursuant to the Settlement, if:
    - (1) The Worker's last day of employment for the certified Manufacturer is within the Worker's Repatriation Eligibility Period as defined herein;
    - (2) The Worker returns to his or her homeland within forty-five (45) days after the Worker's last day of employment;
    - (3) The Worker has not previously obtained a Repatriation Payment pursuant to this Section; and

- (4) The Worker agrees not to return to Saipan as a Worker for at least twelve (12) months after the Worker's last day of employment unless the Worker repays the Repatriation Payment to the OB pursuant to Section VII.B.4.h.
- b. The OB shall use its best efforts to distribute an eligible Worker's Repatriation Payment within 30 days after the Worker has returned to his or her homeland.
- c. The amount of a Repatriation Payment made pursuant to this provision shall be calculated as a maximum of \$3,000 (three thousand U.S. dollars), *pro rated* over the months remaining in the Worker's Repatriation Eligibility Period (e.g., an eligible Worker with a 52-week Repatriation Eligibility Period who is terminated after the 26th week of such Period would be paid \$1,500).
- d. For every Worker employed by a Certified Manufacturer as of the Program Effective Date, the Repatriation Eligibility Period shall be two (2) years from the date the Worker's first employment contract was approved by the CNMI Director of Labor.
- e. For every Worker who signs a Disclosure Document after the Program Effective Date, the Repatriation Eligibility Period shall be the period from the Worker's first date of arrival in the CNMI to begin employment for a Certified Manufacturer through the expiration date of the worker's one-year employment contract for that Certified Manufacturer (e.g., an eligible Worker who arrives in the CNMI four (4) weeks after signing a contract that then has forty-eight (48) weeks remaining, whose employment terminates twelve (12) weeks after the Worker's arrival in the CNMI, would be entitled to  $36/48 \times \$3,000 = \$2,250.00$ ).
- f. Notwithstanding any other provision in ~~this~~ Section, if a Worker's Certified Manufacturer failed to obtain the Worker's Disclosure Document required by Standard 3 or knowingly procured that Disclosure Document through false or fraudulent pretenses with the intent to deceive the Worker, that Worker may elect to terminate his or her employment within fifteen (15) days after participating in a group meeting pursuant to Section VI.E.2 and the Worker shall thereupon be entitled to the full amount of the Repatriation Payment (\$3,000), without any *pro rata* deduction, if:
- (1) The Worker subsequently returns to his or her homeland within forty-five (45) days after the Worker's last day of employment;
  - (2) The Worker has not previously obtained a Repatriation Payment pursuant to this Section; and
  - (3) The Worker agrees not to return to Saipan as a Worker for at least twelve (12) months after the Worker's last day of employment unless the Worker repays the Repatriation Payment to the OB pursuant to Section VII.B.4.h.

- g.** Certified Manufacturers shall inform each Worker whose employment terminates before the end of the Worker's Repatriation Eligibility Period that the Worker may have a right to a Repatriation Payment pursuant to this Standard; and shall inform the OB of the identity and the best practicable means for contacting such Worker in Saipan and in the Worker's home country. The Certified Manufacturer shall provide such notice to the Worker and the OB prior to the Worker's actual last day of employment, if such date is known in advance, and as soon as practically possible.
- h.** No Certified Manufacturer may hire a previously-employed Worker otherwise eligible for a Repatriation Payment within 12 months of that Worker's last day of employment unless that Worker repays to the OB any Repatriation Payment that the Worker previously received.
- i.** The OB shall have discretion, in cases of documented hardship, to supplement the amount of Repatriation Payments made to an eligible Worker, if funds are available for that purpose.
- 5.** Standard 5: No Certified Manufacturer may directly charge any Worker an Employment Fee as a condition of employment or re-employment, except for any government fees that are owed by the worker under CNMI law.
- 6.** Standard 6 Each Certified Manufacturer shall pay the following Worker-related expenses if incurred after the Effective Date: the costs of transportation to and from the Worker's home country and the CNMI, CNMI taxes required to be paid by the Employer, costs of health benefits required by CNMI statute, and costs and fees incurred in tendering an employment application (see 3 CMC §4424(a)(5)).
- a.** The list of expenses enumerated in this Standard is subject to revision upon a final and unappealable determination in any future case by the District Court for the Northern Mariana Islands the CNMI Superior Court, or any court to which such determination may be appealed, that a CNMI employer is or is not required to pay a particular expense in connection with hiring non-resident Workers under either CNMI law or the FLSA.
- 7.** Each Certified Manufacturer shall be required, upon request of a Monitor or the OB, to document that it paid on behalf of each Worker first hired after the Effective Date all expenses required to be paid by the employer rather than by the Worker under CNMI law or the FLSA for which the Certified Manufacturer can reasonably be expected to maintain documentation in the normal course of its business.
- 7.** Standard 7: Amounts charged to Workers by Certified Manufacturers for housing and food shall not exceed the amounts permitted by CNMI and federal law (29 C.F.R. §531.3), and shall not be deducted directly from a Worker's pay unless the Worker has authorized such deductions in Writing.

**C. Records and Reporting**

1. **Standard 8:** Certified Manufacturers shall ~~maintain~~ accurate records of time worked (subject to rounding as permitted by 28 C.F.R. §785A8(b)), using accurate and properly functioning time clocks.
2. **Standard 9:** Certified Manufacturers shall promptly notify the OB of any investigation by the United States Department of Labor ("DOL"), Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB"), or Occupational Safety and Health Administration ("OSHA"), or by the CNMI Department of Labor and Immigration ("DOLI"), unless the focus of the investigation is not a subject addressed by a Program Standard.
3. **Standard 10:** Certified Manufacturers shall comply with court-ordered search warrants subject to their right to contest the legality and scope of such warrants.
4. **Standard 11:** Certified Manufacturers shall report to the CNMI Division of Health Services the name and address of my Worker known to have or suspected of having a communicable disease, unless such report is prohibited by law.
5. **Standard 12:** Certified Manufacturers shall report to the CNMI Division of Health Services and the OB any case of food poisoning or unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom, unless (such report is prohibited by law).

**D. Personal Rights**

**Standard 13:** Workers shall be permitted to keep their passports in their possession.

**Standard 14:** Each Certified Manufacturer shall inform each of its Employment Brokers that it will not attempt to enforce or facilitate the enforcement of any term of any contract between a Worker and an Employment Broker.

**Standard 15:** Workers shall be permitted to practice their religion and attend religious services, to travel without restriction in the CNMI, to become pregnant, to date, and to exercise all other constitutionally- or statutorily-protected activities. If the OB determines that a claim under this Standard alleges an unfair labor practice, it may refer the Worker making the claim to the NLRB, and shall defer further investigation or resolution of the claim as provided by Section X.C.1 absent compelling reason to proceed.

**Standard 16:** During non-working hours, Workers shall be permitted to come and go as they choose from any living facility in which they reside, subject to reasonable restrictions for the comfort and safety of other Workers.

**Standard 17:** Workers shall receive at least one day off in seven (7), unless the Worker states in Writing that he or she voluntarily chooses to work a seventh day in a given seven-day period.

**Standard 18:** Workers shall not be permitted to work more than sixty (60) hours per week unless the Worker states in writing that he or she voluntarily chooses to work more than sixty (60) hours in a given week

**Standard 19:** A Worker's short-term 'medical injury shall not be cause for terminating a worker's employment prior to expiration of the Worker's employment contract unless:

- a. Such termination is permitted by law;
- b. The Certified Manufacturer has concluded in good faith that the injury prevents a Worker from working; and
- c. The length of the expected recovery time is a significant portion of the remaining term of the Worker's contract with that Certified Manufacturer.

**Standard 20:** Workers shall not suffer discrimination based on gender, race, religion, age, disability, sexual orientation, national or ethnic origin, or any applicable legally proscribed criteria, provided that nothing herein shall supercede CNMI law.

**Standard 21:** Workers shall be at or over the minimum legal working age under CNMI law.

**Standard 22:** A Certified Manufacturer's employment contracts with Workers shall comply with all requirements of CNMI law, including any required provision of medical benefits, including medical care required for any Worker's pregnancy to the extent required by law.

**Standard 23:** A Certified Manufacturer shall not subject Workers to intentional infliction of physical harm, sexual abuse, unlawful harassment, or verbal abuse of such severity or frequency that it creates a hostile work environment as defined by applicable law.

**Standard 24:** Workers shall not be required by a Certified Manufacturer to enter into non-disclosure or non-compete agreements except to the extent necessary to protect proprietary information or trade secrets of the Certified Manufacturer, as those concepts are now or hereinafter recognized under CNMI law.

**Standard 25:** No Certified Manufacturer shall retaliate against any Worker or threaten to retaliate against any Worker because that Worker has asserted a claim, has supported another Worker's claim, or has engaged in any conduct protected by law against

retaliation. Except as otherwise provided by law, it shall be a complete defense to a claim of retaliation that the Certified Manufacturer had a legitimate, good faith non-retaliatory reason for the challenged conduct.

14. Standard 26: Any Certified Manufacturer that is a participant in good standing in the OSHA "Excellence 2000" Partnership Program, or whose participation in such program is terminated for any reason, shall immediately so notify the OB, which may consider that factor in determining the appropriate scope of the Inspections of the Certified Manufacturer's Facilities and Operations.

**E. Manufacturing Facilities**

1. Standard 27: Lavatory facilities shall meet or exceed OSHA (29 C.F.R. §1910.141(c)) and CNMI regulations.
2. Standard 28: An adequate and readily accessible supply of potable drinking water shall be available in accordance with OSHA (29 C.F.R. §1910.141(b)(1)) and CNMI regulations.
3. Standard 29: Facilities shall be reasonably well ventilated and lit and maintained at a reasonably comfortable temperature, although air conditioning is not required.
4. Standard 30: Facilities shall comply with OSHA regulations (29 C.F.R. §1910.36(b)) regarding exits.
5. Standard 31: Facilities shall have operating fire alarms and fire extinguishers on each floor that comply with OSHA regulations (29 C.F.R. §1910.157(c)).

plan, and training shall be periodically conducted with respect to those plans (29 C.F.R. §1910.38).

Standard 33: Adequate first aid supplies shall be available for the emergency treatment of injured Workers.

**1. Grounds**

**2. Sleeping Areas**



**Standard 35:** Housing facilities shall be well ventilated and adequately lit.

**Standard 36:** Each sleeping room shall contain at least fifty (50) square feet of floor space for each occupant. The ceiling shall be at least seven (7) feet high.

**Standard 37:** Separate beds shall be provided for each occupant.

**Standard 38:** Sleeping rooms without air conditioning shall have windows that can open with screens.

**Standard 39:** An adequate and convenient water supply shall be provided for drinking, bathing and laundry.

#### Toilet Facilities

**Standard 40:** The combined number of sit down and Asian-style toilets shall be no fewer than one per fifteen (15) persons.

**Standard 41:** Where there are ten (10) or more persons of different sexes using the toilet facility, separate toilet facilities, appropriately identified, shall be provided for each sex.

**Standard 42:** Toilet facilities shall be located within two hundred (200) feet of the sleeping quarters.

**Standard 43:** Natural ventilation consisting of operable windows or other openings shall be provided, the area of which shall not be less than 1/15 of the floor area of the toilet facility. In lieu of natural ventilation, mechanical ventilation capable of exhausting at least two (2) cubic feet per minute per foot of floor area may be provided.

**Standard 44:** All outside openings shall be screened.

**Standard 45:** Toilet facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition.

**Standard 46:** Toilet facilities shall have adequate lighting.

**Standard 47:** An adequate supply of toilet paper shall be maintained by a Certified Manufacturer.

**Standard 48:** Access to toilet facilities shall not intrude upon private sleeping quarters.

4. **Laundry, Handwashing and Bathing Facilities**

- a. Standard 49: ~~Not fewer than~~ one laundry tray, tub, or equivalent laundry alternative shall be provided for every fifteen (15) or fewer persons.
- b. Standard 50: ~~Not fewer than~~ one handwash basin shall be provided for every six (6) or fewer persons.
- c. Standard 51: Not fewer than one showerhead shall be provided for every ten (10) or fewer persons.
- d. Standard 52: Facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition. Floors shall be of a smooth, but not slippery surface.

5. **Sewage and Refuse Disposal**

- a. Standard 53: All drains from toilet, laundry, handwashing, bathing or kitchen facilities shall be connected to sewer lines or septic tanks.
- b. Standard 54: Garbage shall be stored in disposable or cleanable containers that are kept clean and secured from flies, rodents, other vermin, and water.

6. **Telephone and Mail Service**

- a. Standard 55: Certified Manufacturers shall make diligent efforts to have pay telephone service installed and maintained and to ensure that their Workers have access to such telephones and to United States mail service during the Workers' normal working hours.

G. **Food Service**

- 1. Standard 56: Food preparation and serving areas shall comply with the sanitary standards in CNMI Department of Public Health and Environmental Services rules or regulations implementing 1 C.M.C. §2605(r) and in Food and Drug Administration 2001 Food Code, Ch. 6 (<http://www.cfsan.fda.gov/~dms/fc01-6.html>), as amended, or CNMI Department of Public Health and Environmental Services rules and regulations.
- 2. Standard 57: certified Manufacturer-provided food shall be adequate in quantity and quality to meet nutritional needs.
- 3. Standard 58: Any incident of food poisoning shall be reported to the OB, which may investigate and report problems to the local health authorities.

4. **Standard 5.9** Unrestricted access to all food preparation facilities shall be provided to government health inspectors.

#### VIII. Remediation

- A. The goals and purposes of this Program include securing to Workers the enumerated rights and benefits in full, and in the manner least burdensome, financially or otherwise, to Certified Manufacturers. Where two or more methods of remediation fully secure the Workers' enumerated rights and benefits under the Program, the method least burdensome to the Certified Manufacturer is preferred.
- B. Upon a Monitor's finding in accordance with the factors and procedures herein that a Certified Manufacturer has violated a Program Standard, it shall notify the Certified Manufacturer concerning the type and extent of the violation and may propose a remediation plan and timetable consistent with this Section. The Monitor shall provide the Certified Manufacturer an opportunity to meet and confer with respect to its findings and proposals, if any. If the Certified Manufacturer proposes an alternative remediation plan or timetable, the Monitor shall accept that alternative if it is consistent with the Program Standards, goals, and purposes.
- C. Remediation for a Worker's economic losses resulting from a Certified Manufacturer's violation of a Program Standard in Category B (payment to Workers) shall be limited to compensating the affected Worker based upon evidence of that Worker's actual, individual economic loss, and shall not include damages for mental suffering, intangible economic damages, or any other tort measure of damages. Neither the OB nor a Monitor may extrapolate evidence from one Worker as the basis for concluding that another Worker suffered comparable loss, but must require independent, credible evidence of each Worker's loss. Remediation for violations of Program Standards in Category B (Payment to Workers) may also require the Certified Manufacturer to cease and desist.
- D. Remediation for violations of Program Standards in other Categories may include a requirement to abate to conform to Program Standards, to cease and desist from violating a Program Standard, or to provide other reasonable relief that is appropriate and consistent with the Program Standards, goals and purposes; except that no economic compensation shall be required to be paid to any Worker for violation of any Program Standard that is not in Category B (Payment to Workers).
- E. For purposes of this Program, a Certified Manufacturer that has been required to cease and desist from violating a Program Standard shall be deemed not to have remediated the violation if it knowingly or recklessly violates that same Program Standard prior to the completion of the next Regular Inspection. The Monitor shall require a Certified Manufacturer to cease and desist from Violating a Program Standard if it finds that a cease and desist requirement will be an effective remedy and that absent a cease and desist requirement the Certified Manufacturer will likely engage in other future violations of the same Program Standard.

- F. A Worker who accepts economic compensation as remediation for any violation of a Category B (payment to Workers) Standard shall execute a written waiver of any claim for additional economic compensation for that violation as a condition of accepting the compensation, and upon knowingly and voluntarily executing such waiver shall thereafter be precluded from pursuing in any forum any claim for additional economic compensation for that violation.

## IX. Confidentiality and Transparency

### A. Confidential Information

1. All information pertaining to this Program shall be kept strictly confidential by the Monitors and by the OB except as specified herein.

### B. Required Disclosures

1. A Monitor's Report of an inspection shall promptly be disclosed to the Manufacturer to which it pertains and to the Customers of that Manufacturer upon the Customers' written request.
2. The OB's determination that a Certified Manufacturer has been placed on Probation and a Monitor's finding that a Certified Manufacturer has engaged in Conduct Warranting Probation, and the grounds therefor, shall promptly be disclosed in writing to the Certified Manufacturer, its Customers, and its current Workers.
3. The OB's determination that a Certified Manufacturer has been placed on Probation shall be publicly disclosed in the OB's Annual Report no sooner than nine months after the OB has made such determination.
4. The removal of a Certified Manufacturer from Probation shall be immediately disclosed in writing to the Certified Manufacturer, its Customers, and to its Workers if the placing of the Certified Manufacturer on Probation was communicated to such Workers.
5. The Monitors may disclose to Workers who claim a violation of Program Standards or who are affected by a violation of Program Standards the Monitors' findings with respect to such alleged violation, what remediation, if any, the Monitors have required, and whether the Certified Manufacturer has agreed to undertake the required remediation.
6. The OB may disclose to Customers of a Certified Manufacturer a Monitor's finding that the Certified Manufacturer has violated one or more Program Standards if, in the opinion of the OB, the violation is of a type that may pose a serious threat to the health, safety, or economic well being of a Worker. Such disclosures shall include a written statement of the Monitor's finding of violation, any response thereto by the Certified

Manufacture, any plan of remediation or response strategy, any or may by the OB with respect to that finding, and the that no determination has been made. This report shall be for informational purposes only and is not intended to be used by the owner or the owner's representative.

7. The OB may also disclose to Customers of a Certified Manufacturer its determination that the Certified Manufacturer has refused to comply with obligations imposed by Section VI of this Program.
8. Upon inquiry by a Customer or potential Customer, the OB shall disclose:
  - a. Whether a Manufacturer is a Certified Manufacturer;
  - b. The date of a Manufacturer's certification; and
  - c. Whether the Manufacturer is on Probation or has engaged in Conduct Warranting Probation

C. Permissible Disclosure to Government

- I. The OB may, in its discretion, disclose to appropriate government agencies a condition at a Manufacturer revealed in an inspection that presents an immediate and serious risk to the health or safety of Workers, and shall make any other disclosures required by law.

X. Inspection Protocols

A. Scheduling of Inspections and Rotation of Monitors

1. The timing and scope of all Inspections shall be determined by the OB within the parameters set forth in this Program. The OB has the discretion to make any Inspection announced or unannounced, consistent with goals and purposes of the Program.
2. Each Inspection of a Certified Manufacturer shall be conducted by a different Monitor than the one that conducted the immediately preceding Inspection of that Certified Manufacturer, unless:
  - a. Rotation is waived by a Certified Manufacturer;
  - b. An exceptional circumstance is found by the OB (not to include Program efficiency or the absence of a second Monitor);
  - c. An exception is specifically provided herein.

**B. Frequency of Inspection**

1. The Facilities and Operations of each Certified Manufacturer shall receive an initial Inspection promptly after the Program Effective Date that shall comprehensively address all Program Standards unless in the discretion of the OB a more limited inspection is appropriate. Except as otherwise specifically provided, the Facilities and Operations of each Certified Manufacturer shall receive a Regular Inspection twice per year.
2. The OB shall ensure that the Monitors limit their visits and inspections to those reasonably necessary to carry out their responsibilities pursuant to this Program, and that the Monitors conduct every Inspection in strict accordance with the Inspection Protocols.

**C. Parallel Government Investigations**

1. Upon notification by a Certified Manufacturer that it has been charged, cited, or sued by a government agency, and upon the Certified Manufacturer's written agreement to disclose to the OB all communications between the Manufacturer and the agency pertaining to the matter, the OB shall suspend Inspections of the Certified Manufacturer but only to the extent such Inspections would overlap the subject matter of the agency's action, and it shall maintain such suspension until the agency's action has been completed or enforcement action following therefrom concluded. The OB shall have the discretion to determine the extent of overlap between its Inspections and the subject matter of an agency's action and to adjust the scope of its Inspections accordingly. The OB may take the outcome of any such enforcement action into account in determining the Certified Manufacturer's conformance to the Program Standards.

**D. Initial Inspections**

1. The OB shall create a protocol for the Initial Inspection of any Manufacturer seeking Initial Certification after the Effective Date of this Program. In addition to any Inspections otherwise required pursuant to this Program, such Initial Inspections shall include at least the following:
  - a. Assuring that the Manufacturer prepares and maintains full and accurate personnel and payroll records as necessary to ensure compliance with the Program Standards;
  - b. Assuring that the Manufacturer has an operating, accurate time clock where daily hours are recorded and that the Manufacturer's Workers personally clock in and out. The Manufacturer may also use time sheets in addition to, but not instead of, a time clock. Time cards or sheets must have the full and complete names of the Workers and must correspond to the personnel records;

- c. Conducting a walk-through of the **Manufacturer's Facilities** to ensure that the **Program Standards** are substantially satisfied;
  - d. **Assuring** that a **summary** of the **Program Standards** is **posted** in the language(s) spoken by the Workers employed by the Manufacturer in **prominent locations** throughout the Facilities; and
  - e. Interviewing a reasonable sampling of **Workers** to ensure ~~that they are aware of their~~ **rights** and the Manufacturer's obligations pursuant to this Program.
2. In conducting the **Initial Inspection**, the Monitor shall consider the **Manufacturer's** then-existing Operations and Facilities **only**, and ~~neither~~ the Monitor nor the OB shall inspect or evaluate past conditions or alleged violations that are ~~not of an ongoing or continuing~~ nature. **Nothing herein** shall be construed to permit the OB to require a Manufacturer as a condition of passing an Initial Inspection to pay **any compensation to a Worker** for violations that occurred before the date of the **Initial Inspection**, or, in the case of violations alleged to be continuing, for any portion of the violation that occurred before the date of the **Initial Inspection**.
  3. If the OB determines after evaluating the Initial Inspection of a Manufacturer seeking Initial Certification after the **Effective Date** of this Program that ~~the Manufacturer is not~~ in substantial compliance with the provisions of the **Program Standards**, it shall either deny Certification or condition Certification upon the **Manufacturer** remediating the specific areas of non-compliance within a specified time period, subject to the OB's subsequent determination that **all** stated conditions have been fully and timely satisfied; provided that if the OB determines that the Manufacturer's non-compliance with OSHA regulations is the **only area** of its non-compliance and ~~that the non-compliance does not~~ pose a **serious danger to worker health and safety**, the OB shall grant the Manufacturer a conditional Certification with at least ninety (90) days to remediate such non-compliance.

**E. Regular Inspections**

1. In any **Regular Inspection**, the OB shall have the discretion to designate specific Program Standards that shall be included within or excluded from the scope of the Monitor's Inspection.
2. Subject to the **direction** and control of the OB, the Monitors are authorized to carry out the following **Inspection tasks** during the course of **Regular Inspections** and other **Inspections as warranted**:
  - a. Interviews with factory management on all areas relating to the Program Standards;
  - b. A 'paper audit' of management policies and records related to Programs Standards;

- c. A "walk-through" audit of the factory to assess compliance with Program Standards;
- d. Confidential interviews with Workers to discover the existence and extent of any violations of Program Standards;
- e. Checking that the summaries of the Program Standards are posted prominently in the factory, and have been disseminated to every Worker;
- f. Conducting unannounced visits and unobserved surveillance of the factory to assess compliance with Program Standards;
- g. Conducting announced and unannounced visits to Certified Manufacturer-provided living and food preparation and service facilities to assess compliance with Program Standards; and
- h. With prior permission from the Worker, visiting Certified Manufacturer-provided employee living facilities during a Worker's non-work time to assess compliance with Program Standards.

**F. Focused Inspections**

- 1. A "Focused Inspection" is an inspection whose scope is limited as set forth herein. A Focused Inspection may occur in any of three situations:

- a. **Worker-Initiated Focused Inspections**

- (1) A Worker-Initiated Focused Inspection may be scheduled by the OB upon receipt by a Monitor or the OB of a claim by a Worker that a Certified Manufacturer has violated one or more Program Standards, or upon receipt of credible information from a reliable source regarding any imminent threat to worker health and safety. The scope of a Worker-Initiated Focused Inspection shall be limited to the Category of Standards that includes the Standard with which the Certified Manufacturer's compliance has been disputed.

- b. **Follow-Up Focused Inspections**

- (1) A Follow-Up Focused Inspection is limited to evaluating whether the Certified Manufacturer has remedied violations of Program Standards. A Certified Manufacturer may request a Follow-Up Focused Inspection any time after a Monitor has found or the OB has determined that the Certified Manufacturer has violated a Program Standard. The OB shall schedule and cause a Monitor to conduct such Follow-Up Focused Inspection within thirty (30) days of such a request.

- c. **Mid-Probation Focused Inspections**



- (1) A Certified Manufacturer may request a Mid-Probation Focused Inspection at any time during Probation (but not more than twice unless permitted by the OB). The scope of a Mid-Probation Focused Inspection shall be limited to the Category of Standards that include the Standard that the Certified Manufacturer has been found to have violated. A Mid-Probation Focused Inspection shall be unannounced, but shall be made within twenty (20) days of its being requested. The OB shall notify all Customers of a Certified Manufacturer on Probation if that Certified Manufacturer has not passed a Mid-Probation Focused Inspection within the first six months of being placed on Probation.

#### **G. Exit Interviews**

1. As part of a Regular Inspection, the Monitor may request a list of all Workers who are expected to leave the employment of the Certified Manufacturer within the next forty-five (45) days, and may conduct Exit Interviews of any of those workers prior to their departure, provided that a Certified Manufacturer shall not face any economic liability as a result of any violations identified only in an Exit Interview. Exit Interviews should take place at a neutral site, with no third parties present (other than an interpreter or other person selected by the Worker who is unrelated to the Parties or their counsel). The purpose of the Exit Interview is to gather additional information from the Worker in a confidential setting, pertaining to his or her work for the Certified Manufacturer and his or her working and living conditions while employed by the Certified Manufacturer.

#### **H. General Principles Governing Inspections**

##### **1. Worker Interviews**

- a. The Monitors shall, to the extent reasonably possible, conduct Worker interviews in a private area or other circumstance in which the Worker's confidentiality is assured. No manager or supervisor of the Certified Manufacturer may be present at, monitor, or otherwise participate in any Worker interviews. The Certified Manufacturer shall pay its Workers their regular wages for any time spent being interviewed by a Monitor during an Inspection.

##### **2. Inspections of Living Facilities**

- a. A Monitor may inspect Certified Manufacturer-provided living facilities between the hours of 7:00 a.m. and 11:00 p.m. and may receive complaints from Workers and may interview Workers about living (but not manufacturing) conditions during those inspections.

##### **3. Management Interviews**

- a. A Monitor may interview a Certified Manufacturer's management personnel pursuant to this Program only upon at least three (3) hours advance notice, absent the consent of such management personnel to be interviewed upon shorter notice.

#### 4. Record Inspection

- a. A Monitor may examine a Certified Manufacturer's employment-related records, including time cards, payroll, personnel information, and piece rate tickets, only between the hours of 8:00 a.m. and 6:00 p.m. Mondays through Fridays, and only upon at least three (3) hours advance notice, except with the consent of management, and except that Worker time cards may be examined at any time during an inspection.

#### 5. Monitoring Inspection Teams

- a. Each Monitor inspection team shall include at least one individual who speaks the primary language of the Workers, and the Monitor shall endeavor to include on each team persons with a reasonably similar cultural background to the Workers — e.g., ex-garment workers or persons from the same region where many of the workers are from. Each Monitor's inspection staff shall be rotated from factory to factory on a schedule determined by the OB, to minimize the risk of conflicts of interest or any appearance of impropriety. The OB and Monitors shall call upon technically trained professionals to train the Monitors' inspectors and to provide assistance in areas of the investigation where needed.

#### 6. Claims of Program Standard Violations

- a. The OB shall establish a procedure for enabling Workers to make claims of Program Standards violations to the Monitors, and for informing Workers of their rights and options with respect to making claims to applicable federal and CNMI government agencies. Workers shall receive appropriate information concerning confidentiality if any such claims are made by them or on their behalf.

### I. Post-Inspection Procedures

#### 1. Post-Inspection Conference

- a. After an inspection has been completed, the Monitor shall conduct a Post-Inspection Conference with the Certified Manufacturer to report its findings. If the Monitor has found a violation, it shall propose a remediation plan consistent with the provisions of Section VIII, and shall provide the Certified Manufacturer a reasonable opportunity to present additional information or explanation that the Certified Manufacturer believes demonstrates no violation or that mitigates the impact of the alleged violation, or to propose an alternate method of remediation. The Certified Manufacturer may request that the Post-Inspection Conference be continued for a

period not to exceed five (5) days to enable the Certified Manufacturer within that time either to remedy the alleged violation or adopt a plan to effectuate a remedy within a reasonable period of time. The Certified Manufacturer may request a Follow-Up Focused Inspection by the same Monitor before a continued Post-Inspection Conference is conducted.

## **2. Monitor Reports To The OB Following an Inspection**

- a. The Monitors shall prepare written reports to the OB promptly after all Post-Inspection Conferences, and if reasonably possible within five (5) days after the completion of such Conferences. Such Monitor Reports shall describe the scope of the Inspection, and either identify any violations of a Program Standard found by the Monitor and any violation that was not remediated prior to the completion of a Post-Inspection Conference, or state that no such violations were found. If the Inspection relates to a previously-found violation, the Monitor's Report shall state whether, and in what manner, that violation has been remedied. The Monitor's Report shall also summarize any discussion and any information presented at the Post-Inspection Conference, including any remediation plan proposed by the Monitor or the Certified Manufacturer. If substantial violations of a Program Standard are identified by the Monitor, the Monitor's Report shall provide a detailed description of the nature and extent of the Violation and shall state whether and in what manner those violations have been remedied. If a Monitor finds that a Certified Manufacturer may have engaged in Conduct Warranting Probation as defined in Section X.1.3.a herein, the Monitor's Report shall also state the basis for such finding. With respect to each factor set forth in Section X.1.3.a.
- b. The Certified Manufacturer, within five (5) days after receiving a Monitor's Report of an Inspection, may submit a Responsive Statement to the OB disputing the Monitor's Report in whole or in part.

## **3. Probation and Conduct Warranting Probation**

### **a. Conduct Warranting Probation**

- (1) A Monitor shall not report that a Certified Manufacturer has engaged in Conduct Warranting Probation unless it finds that:
  - (a) The Certified Manufacturer has committed one or more Program Standard violations that the Certified Manufacturer has not remedied as required consistent with the principles of Section VIII herein; and
  - (b) The seriousness and frequency of the Certified Manufacturer's violations reflect a willful or reckless disregard of the Program Standards by management at a level above factory-floor supervisors.

(2) In evaluating whether a Certified Manufacturer's violations of the Program Standards constitute Conduct Warranting Probation, the Monitors shall consider:

- (a) The number and relatedness of the Violations;
- (b) The duration or transitory character of *each* violation;
- (c) The frequency with which the violations occurred;
- (d) Whether the violations reflect a willful or deliberate disregard of Program Standards by management at a level above factory-floor supervisors;
- (e) The actual harm or risk of harm the violations present to the health or safety of Workers;
- (f) The number of Workers affected;
- (g) The Certified Manufacturer's good faith and diligence in trying to avoid the violations; and
- (h) The Certified Manufacturer's good faith and diligence in taking reasonable remedial action upon discovering the violations.

**b, Probation**

- (1) The OB may place a Certified Manufacturer on Probation, after conducting any Hearing required by a Certified Manufacturer's timely request pursuant to Section X.I.3.b.2, if the Monitor has found that the Certified Manufacturer engaged in Conduct Warranting Probation, the OB upholds the Monitor's finding, and:
  - (a) The OB determines with respect to the first Inspection conducted after the Monitor's Conduct-Warranting-Probation finding that the Certified Manufacturer continues to engage in Conduct Warranting Probation in the same Category or Categories of Program Standards that gave rise to the Monitor's finding; or
  - (b) The OB determines with respect to any Inspection conducted after the Monitor's Conduct-Warranting-Probation finding that the Certified Manufacturer's Conduct Warranting Probation has continued substantially unabated since the Monitor's Conduct-Warranting-Probation finding.
- (2) Before placing a Certified Manufacturer on Probation or determining not to remove a Certified Manufacturer from Probation, the OB must permit the Certified Manufacturer, within five days (5) after receiving the Monitor's Report

of the subsequent **Inspection**, to submit a **Responsive Statement to the OB** disputing ~~the~~ **Monitor's Report** and to request a **Hearing** before the OB.

- (3) The OB shall not consider evidence of a **Certified Manufacturer's first violation** of a Program Standard **in determining** whether ~~the~~ **Certified Manufacturer** should be on **Probation** ~~if the Certified Manufacturer remedied that violation prior to the conclusion of the Post-Inspection Conference conducted with respect to that violation.~~
- (4) The OB shall be required to conduct a **Hearing upon a Certified Manufacturer's** timely request pursuant to Section **X.I.3.b.2** ~~before the OB may place a Certified Manufacturer on Probation or determine not to remove a Certified Manufacturer from Probation.~~ The OB may also conduct a **Hearing** on its own initiative in any situation **in** which it **believes** that a **Hearing** would clarify a **disputed issue of fact** or would otherwise be helpful **to the operation of this Program.** Except as provided in Section **X.I.3.b.5** and **X.I.3.b.6** the OB shall make no determination regarding a **Certified Manufacturer's Probation** without a **Hearing.**
- (5) If the **Certified Manufactum** does not timely request a **Hearing** ~~after receiving the Monitor's Report of the subsequent Inspection,~~ and if the OB does not thereupon conduct a **Hearing** on its own initiative, the OB shall decide whether to place or continue ~~the Certified Manufacturer on Probation~~ based upon the **Monitor's Report** and the **Certified Manufacturer's Responsive Statement**, if any.
- (6) Upon the **Certified Manufacturer's** timely request, the OB shall schedule a **Hearing** to determine whether to place a **Certified Manufacturer on Probation** or remove a **Certified Manufacturer from Probation** for a date not less than **fifteen (15) days** nor more than **ninety (90) days** after receipt of the **Certified Manufacturer's** request; except ~~that if two (2) Hearings have already been conducted with respect to imposing or removing the same Probation,~~ the OB in its discretion may make its determination ~~with~~ **without a Hearing** based upon the **Monitor's Report** and ~~the~~ **Certified Manufacturer's Responsive Statement**, if any.
- (7) If a **Hearing** is timely requested but is not conducted within the time period stated in Section **X.I.3.b.6** (and if no more than one **Hearing** has already been conducted ~~with respect to the Probation at issue~~), the **Certified Manufacturer** shall not be placed on **Probation** or ~~shall be removed from Probation.~~ as the case may be.
- (8) All **Hearings** before the OB shall be on **Saipa'a.** All **relevant evidence** shall be admissible at such **Hearings**, except that ~~hearsay evidence~~ shall be admissible **only** as provided by the **Federal Rules of Evidence.** All testimony shall be under oath and subject to cross-examination. The **Monitor** shall have the burden of **sustaining** any ~~of its~~ findings by a **preponderance of the evidence.** The OB shall

review *de novo* my factual dispute concerning whether the Certified Manufacturer violated a Program Standard.

- (9) The OB shall issue its ~~Written~~ decision regarding Probation within forty-five (45) days following the conclusion of a Hearing or within forty-five (45) days after the deadline for receipt of the Certified Manufacturer's Responsive Statement if no Hearing has been conducted. If the OB fails to issue its decision regarding Probation within this time period, the Certified Manufacturer shall not be placed on Probation or shall be removed from Probation, as the case may be.
- (10) A Certified Manufacturer that is not on Probation shall not be placed on Probation based upon a Monitor's findings of Program Standard violations resulting from an inspection if:
  - (a) The Monitor delays for more than thirty (30) days after the Post-Inspection Conference with respect to those findings before submitting to the OB its Monitor's Report of an Inspection pertaining to that Probation; and
  - (b) The OB determines that the Certified Manufacturer has been unreasonably prejudiced in its ability to respond to the Monitor's findings as a result of that delay.
- (11) A Certified Manufacturer on Probation shall be removed from Probation if a Monitor delays for more than fifteen (15) days after the Post-Inspection Conference conducted with respect to an inspection conducted during the Probation before submitting to the OB its Monitor's Report of the Inspection.
- (12) In addition to the grounds for removal from Probation set forth in Section X.I.3.b.7, X.I.3.b.9, and X.I.3.b.11, the OB shall remove a Certified Manufacturer from Probation upon determining that the violations giving rise to the Probation have been remediated as provided in this P.r.o.p., and that the Certified Manufacturer is engaged in no other current unremediated violations of Program Standards in the same Category as the violations giving rise to the Probation.
- (13) The OB may assist a worker whose employment has been terminated by a Manufacturer that is on Probation in seeking alternative employment and filing any necessary documentation with the CNMI Department of Labor and Immigration.

## **XI. Program Funding and Termination**

- A. The OB shall terminate the Program upon the fourth anniversary of the Program Effective Date.

- B. Nothing herein shall prohibit some or all of the Manufacturers or members of the OB from agreeing to continue this Program, or any modification thereof, on a voluntary basis beyond the term provided for herein. The program shall be funded as set forth in the Agreements to which this Program is an Exhibit, and any funds remaining upon the expiration of the Program shall be distributed as set forth in such Agreements.

## **XII. Miscellaneous**

### **A. Entire Monitoring Program: Severability**

1. This Monitoring Program constitutes the entire Monitoring Program, and there are no other terms modifying or affecting its terms except as explicitly set forth in the Agreements to which this Program is an Exhibit. If any provision of this Monitoring Program, or part thereof, is held invalid or void as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which shall continue to be given full force and effect. Only to this extent are the provisions, and parts thereof, of this Monitoring Program severable.

### **B. Modification**

1. This Monitoring Program can only be modified as set forth in the Agreements to which it is attached. If any provision or part thereof, of the Monitoring Program is held to be invalid or void, the Parties to such Agreements shall either agree upon a valid substitute provision which is consistent with the intent and purpose of the severed provision, or agree that no substitute provision is necessary. If there is no agreement, the OB shall act as arbitrator and determine, in its discretion, either a substitute provision that is consistent with the original intent and purpose of Monitoring Program or that no substitute provision is necessary.

### **C. Waiver**

1. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. A consent to or approval of an act does not waive or render unnecessary the consent to or approval of any other or subsequent act.

### **D. CNMI Law to Govern**

This Monitoring Program is being made and delivered and is intended to be performed in the CNMI. The execution, validity, construction, and performance of this Monitoring Program shall be construed and enforced in accordance with the laws of the CNMI without regard to choice of law principles. This Monitoring Program shall be deemed made and entered into in CNMI, which shall be the exclusive venue for any action relating to this Monitoring Program.

**E. Interpretation**

1. This Monitoring Program is being made without reliance upon any statement or representation not contained herein. This Monitoring Program shall be construed and enforced according to its fair meaning as if prepared after extensive negotiation. No part of this Monitoring Program shall be construed on the basis of which Parties or their counsel participated in its drafting.
2. Nothing contained herein is intended to prevent or preclude any Customer or Manufacturer from engaging in any other monitoring or inspection with respect to Operations Facilities in the CNMI.

**F. Private Right of Action**

1. Except as expressly provided herein, this Program establishes no private right of action, remedy, claim, cause for relief, or defense (other than a defense based upon a Worker's knowing and voluntary execution of a waiver pursuant to Standard VIII.F), in or on behalf of any Worker, Manufacturer, the OB, Monitor, or any other person or entity.

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